

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6136 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R L KAPADIA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR PC MASTER for Petitioner

MR VJ DESAI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/03/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The petitioner, an Engineer of the Gujarat Electricity Board, filed this petition before this Court and challenges the order of respondent No.2 dated 13th December, 1983, reverting him from the post of Executive Engineer to the post of Deputy Engineer.

2. Under the order dated 18th May, 1983, the

petitioner was given the promotion to the post of Executive Engineer on temporary basis in pursuance of the approval of his promotion by the Service Selection Committee. In the order dated 18th May, 1983, further it has been mentioned that this arrangement is made without prejudice to the seniority of others over him.

3. The reversion order has been filed by the petitioner as annexure 'G' on the record of this Special Civil Application which is dated 13th December, 1983. I find from this order that against the promotion of the petitioner, the Board received representations from other Deputy Engineers holding higher grade and from DETA Association, and after considering those representations, the order impugned in this Special Civil Application has been made. However, this order has been made without giving any notice or an opportunity of hearing to the petitioner.

4. The counsel for the respondent-Board Shri Desai does not dispute the fact that the order impugned in this Special Civil Application, under which the petitioner was reverted from the post of Executive Engineer to the post of Deputy Engineer, has been made without giving any notice or an opportunity of hearing to the petitioner. However, the counsel for the respondent contended that no notice or an opportunity of hearing was required to be given to the petitioner as it was only a temporary promotion and secondly, it was a conditional promotion.

5. So far as the first contention of the counsel for the respondent-Board is concerned, it is suffice to say that though the order of promotion reveals it to be a temporary promotion, but this Court cannot be oblivious of the fact that the promotion was given on approval of the Selection Committee. So it was not an urgent, temporary officiating promotion or a back door entry. The reversion causes civil consequence as well as it results in monetary loss to the Officer. The representation against the promotion of the petitioner has been made by the Officers of the Board as well as by the Association and after considering those representations, the petitioner has been reverted. In the presence of this fact, before passing any adverse order on the representations made by the third persons, it was more obligatory on the part of the Board to give the petitioner an opportunity of hearing so that he could have an opportunity to satisfy that the complaints made against his promotion have no merits.

6. The counsel for the respondent-Board further

contended that the petitioner was given promotion erroneously and under the impugned order the error committed by the Board has been rectified. However, even if it is taken to be a case of erroneous promotion it was a promotion after approval of the Selection Committee and the order of the reversion has been made on the representation of other persons, the Board which is a State or instrumentality of the State within the meaning of State under Article 12 of the Constitution of India should have adhered to the principles of natural justice so that the person who is sought to be put to monetary loss may have his say in the matter.

7. Lastly, Shri Desai contended that the petitioner has been given the promotion under the nine years rule on the post of Executive Engineer from 1-1-1982, and as such, nothing now survives in this Special Civil Application. What Shri Desai suggests is that the promotion in this case has been given to the petitioner in the year 1983, but now his position has been improved and he has been given the benefit of nine years rule from 1-1-1982. The reply to this contention of the counsel for the petitioner is that the petitioner is entitled for the nine years rule from 1978 which claim still survives and secondly, the petitioner preferred to have the promotion by giving up his right of nine years rule benefit from retrospective effect and in case his promotion is found to be correct then he shall be entitled for the nine years rule on this post, otherwise he may not be. I do not consider it to be appropriate to decide these controversies raised by both the counsel for the parties in this Special Civil Application as what I feel is that it is a case where the petitioner should have been given an opportunity of hearing in the matter.

8. In the result, this Special Civil Application succeeds and the order annexure 'G' is quashed and set aside. However, the order of promotion will not automatically come into force as the petitioner is already holding the higher post. It is the only question whether the petitioner should be considered for promotion or under nine years rule on the higher post. The respondent-Board is directed to decide the question of reversion of the petitioner from the post of Executive Engineer after giving him an opportunity of hearing. In case the claim of the petitioner for promotion is accepted then he shall be entitled for all the consequential benefits which follow therefrom. In case the claim of the petitioner for promotion is not accepted then a reasoned order may be passed and a copy of the same may be sent to the petitioner by registered post.

The decision of this Special Civil Application will have no bearing whatsoever or otherwise any effect on the claim of the petitioner of nine years rule from 1978. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-